

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-00430-BO

U.S. TOBACCO COOPERATIVE, INC.,)
)
)
)
v.)
)
)
CERTAIN UNDERWRITERS AT)
LLOYD'S SUBSCRIBING TO POLICY)
NUMBERS B1353DC1703690000 AND)
B1353DC1602041000)

**DECLARATION OF
RICHARD FOULGER**

Richard Foulger, on oath, declares as follows:

1. I am the Head of Claims at the AEGIS Syndicate 1225 at Lloyd's of London. I have worked for AEGIS for 20 years and have worked in the Lloyd's insurance market for 40 years.
2. AEGIS is the leading insurer on the two policies for the 2016 and 2017 years of account respectively (policy numbers B1353DC1602041000 and B1353DC1703690000) that are the subject of this litigation. As such, we have claims handling authority in conjunction with the leaders of the co-insurance being Riverstone (Lloyd's Syndicate 3210 for the 2016 year of account) and MS Amlin (Lloyd's Syndicate 2001 for the 2017 year of account).
3. On behalf of all insurers, AEGIS and MS Amlin instructed James Saville of Hill Rivkins of New York to represent insurers in respect of this claim. Hill Rivkins is an experienced insurance firm of good standing which regularly represents London insurers on US coverage claims.

4. I naturally believed that Hill Rivkins would represent and protect insurers' interests in the litigation in the same manner that they always had, but recently I became increasingly concerned about the level of reporting from Mr Saville.

5. Last week I contacted Patrick Foss of Kennedys Law LLP (London). I know Kennedys has a New York office and I asked if he could put me in touch with one of his New York partners. At that stage, I was simply looking for a second opinion on the litigation and reassurance that it was being handled correctly, and proceeding as anticipated.

6. I was put in contact with Michael Tricarico in Kennedys' New York office. I then emailed Mr. Saville on June, 15 advising that insurers would be instructing new counsel, Mr. Tricarico, and asking that Mr. Saville give Mr. Tricarico his full cooperation.. He emailed back confirming that he would contact Mr. Tricarico. However, it is my understanding that he did not.

7. Mr. Tricarico then made some inquiries of his own including searches on the court docket and provided us with the following documents on June 18, 2021, and subsequently:

- (a) The Motion for Sanctions and Memorandum of Law in Support dated May 24, 2021.
- (b) The transcript from the hearing before Magistrate Judge, Robert T. Numbers, II that took place on May 3, 2021.
- (c) The order issued by Magistrate Numbers on April 9, 2021.

8. I had never seen any of these documents before, nor was I aware that any motions were pending against the insurers, let alone one seeking sanctions.

9. Upon reviewing this information, I, with the agreement of Ms Amlin and Riverstone on behalf of all insurers, immediately formally dis-instructed Hill Rivkins

on June 21, 2021, and asked Kennedys to contact insurers' local counsel (who we have had no direct dealings with), the insured's counsel, and the Court.

10. I unreservedly apologize to all concerned for the lack of response from and failures of the insurers' prior counsel, Mr. Saville. AEGIS shall take whatever steps are needed for AEGIS to comply with the Court's orders. We have been badly let down by Mr. Saville, and have asked Kennedys to guide us and the co-insurers on next steps and what is outstanding from insurers' side.

11. We appreciate the Court's patience regarding this unique situation, and once we have a clear picture of what needs to be done in order to comply with the Court's directives, we will update the co-insurers, who have even less information on matters than we do, and make every effort to facilitate, with our new counsel, Kennedys, their compliance as well.

12. I declare under penalty of perjury that the foregoing is true and correct.
Executed on June 23, 2021.



RICHARD FOULGER